

AMENDED IN SENATE AUGUST 24, 2005

AMENDED IN SENATE AUGUST 15, 2005

AMENDED IN SENATE JUNE 22, 2005

AMENDED IN ASSEMBLY APRIL 28, 2005

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 585

**Introduced by Assembly Member Negrete McLeod
(Coauthors: Assembly Members Cogdill and Villines)**

February 16, 2005

An act to amend Sections 22900, 22901, 22902, 22903, 22904, 22905, 22906, 22907, 22908, 22909, 22910, 22911, 22913, 22915, 22920, 22922, 22924, 22925, 22926, and 22927 of, to amend the heading of Chapter 28 (commencing with Section 22900) of Division 8 of, and to add Sections 22902.5, 22903.1, 22903.2, and 22903.3 to, the Business and Professions Code, relating to dealers, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 585, as amended, Negrete McLeod. Equipment dealers.

(1) Existing law provides for the regulation of equipment dealers and defines equipment for those purposes as machines designed for agriculture, livestock, grazing, light industrial, and utility purposes. Under existing law, this definition excludes all-terrain vehicles, earthmoving and heavy construction equipment, and mining and forestry equipment. Existing law authorizes an equipment dealer to

establish a lien for unpaid charges and requires the dealer to file the lien with the Secretary of State.

This bill would expand the definition of equipment to include all-terrain vehicles and other machinery, equipment, implements, or attachments used for specified purposes and would designate a person or entity primarily engaged in the retail sale of equipment as a dealer or dealership. The bill would also define various additional terms for the purpose of its provisions including “good cause,” “single-line dealers,” and “single-line suppliers.”

(2) Existing law makes unlawful various acts and practices by a supplier with respect to an equipment dealer. Specifically, existing law, among other things, prohibits discriminatory pricing and unreasonably withholding consent to a transfer of a dealership on a dealer’s death. Existing law also prohibits a supplier from requiring a dealer to complete a substantial renovation or property acquisition without one year’s notice as a condition to renewal or extension of the dealership contract, and requires the supplier to give the dealer a reasonable time to complete the renovation or acquisition.

This bill would revise and recast these provisions dealing with discriminatory pricing and establish procedures for approving or denying a transfer of a dealership upon a dealer’s death. The bill would require a supplier to give a dealer 2 years to complete a renovation or acquisition. The bill would additionally prohibit a supplier from engaging in other specified coercive discriminatory acts with respect to a dealer.

(3) Existing law provides that a supplier shall not terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealer agreement, without cause, as defined.

This bill would make these provisions only applicable to a dealer contract between a dealer who is not a single-line dealer and a supplier who is not a single-line supplier. The bill would expand the definition of good cause for the purpose of this provision. The bill would also create a procedure for approving or denying a request for a sale or transfer of a dealer’s business or an equity ownership interest where the supplier has contractual authority. The bill would provide that a single-line supplier may not terminate a dealer contract without good cause.

The bill would also require a supplier to approve or reject a warranty claim by written notice, as specified, to the dealer within 45

days after the supplier received the warranty claim and would prescribe procedures for resolving those claims.

(4) Existing law requires suppliers to provide an opportunity annually for dealers to return a portion of their surplus inventory parts for credit. Existing law provides that the minimum lawful credit for returned parts is 95% of the net price, as listed in the supplier's current returnable parts list, as specified.

This bill would provide that where an outstanding balance is owed to the supplier, the supplier may credit the dealer's account within 30 days after the supplier's receipt of the dealer's returned parts. If no balance exists, the supplier shall pay the dealer within 30 days after the supplier's receipt of the dealer's returned parts. The bill would make a supplier liable for 110% of the total current net parts cost, plus interest at the statutory rate from the payment due date until the date of payment and actual costs for any court or arbitration proceedings, including costs for attorney's fees and arbitrators if a supplier fails or refuses to pay for returned parts within 30 days if a supplier refuses to credit the dealer's account or pay the dealer for returned parts.

(5) Existing law requires the supplier to repurchase inventory upon termination of a dealer agreement at specified prices based on fair market value or specified percentages of net cost.

This bill would define fair market value for these purposes and modify the percentages of the net equipment cost to be paid for specified types of inventory. The bill would also prescribe the parties' rights and responsibilities with respect to handling, packing, and loading parts for return to the supplier. The bill would entitle the dealer to interest and costs if the payments for inventory are not timely made. The bill would also specify parts that are excluded from these repurchase requirements.

The bill would make numerous technical, conforming, and nonsubstantive changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 28 (commencing with Section 22900) of Division 8 of the Business and Professions Code is amended to read:

CHAPTER 28. FAIR PRACTICES OF EQUIPMENT
MANUFACTURERS, DISTRIBUTORS, WHOLESALERS, AND DEALERS
ACT

SEC. 2. Section 22900 of the Business and Professions Code is amended to read:

22900. The Legislature finds and declares that the retail distribution, sales, and rental of agricultural, construction, utility, industrial, mining, outdoor power, forestry, and lawn and garden equipment, utilizing independent dealers operating under contract with the supplier vitally affects the general economy of the state, the public interest, and the public welfare. Therefore, the Legislature has determined that it is necessary to regulate the business relations between the dealers and suppliers as described in this chapter and that a violation of this chapter contravenes an important public policy of this state. *in this chapter.*

SEC. 3. Section 22901 of the Business and Professions Code is amended to read:

22901. The following definitions apply for purposes of this chapter:

(a) "Act" means the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act.

(b) "Bulk sales law" means the Uniform Commercial Code-Bulk Sales as contained in Division 6 (commencing with Section 6101) of the Commercial Code.

(c) "Claim" means a dealer's claim for reimbursement from a supplier for labor and materials expended by the dealer to meet the requirements of the supplier's warranty agreement with a consumer of the supplier's products if the dealer has complied with the supplier's then-existing written policies and procedures for warranties and warranty claims.

(d) "Current parts price" means, with respect to current parts, the price for repair parts listed in the supplier's price list or catalog in effect at the time the dealer contract is canceled or

discontinued or, for purposes of Section 22905, the price list or catalog in effect at the time the repair parts were ordered. “Current parts price” also means, with respect to superseded repair parts, the price listed in the supplier’s price list or catalog in effect at the time the dealer contract is canceled or discontinued for the part that performs the same function and purpose as the superseded part, but is simply listed under a different part number.

(e) “Current net parts cost” means the current parts price less any trade or cash discounts typically given to the dealer with respect to that dealer’s normal, ordinary course of orders of repair parts. “Current net parts cost” also means, with respect to a warranty, the current parts price of the supplier for the equipment repaired less any trade or cash discounts typically given to the dealer with respect to that dealer’s normal, ordinary course of orders of repair parts.

(f) “Dealer” means any person primarily engaged in the retail sale of equipment as defined in subdivision (i). For the purposes of this act, “dealer” does not include a “franchisee” as defined in Section 331.1 of the Vehicle Code or a “new motor vehicle dealer” as defined in Section 426 of the Vehicle Code.

(g) “Dealer contract” means either an oral or written contract, agreement, or arrangement for a definite or indefinite period between a dealer and a supplier that provides for the rights and obligations of the parties with respect to the purchase or sale of equipment or repair parts. ~~Notwithstanding the foregoing, if a dealer has more than one business location covered by the same dealer contract, the requirements of this act shall apply to the repurchase of a dealer’s inventory at a particular location upon the closing of that location.~~ *equipment or repair parts.*

(h) “Dealership” means the retail sale business engaged in by a dealer under a dealer contract.

(i) “Demonstrator” means equipment in a dealer’s inventory that has not been sold, but has had its usage demonstrated to potential customers, either without charge or pursuant to a short-term rental agreement, with the intent of encouraging the potential customer to purchase the equipment.

(j) (1) “Equipment” means all-terrain vehicles and other machinery, equipment, implements, or attachments used for, or in connection with, any of the following purposes:

1 (A) Lawn, garden, golf course, landscaping, or grounds
2 maintenance.

3 (B) Planting, cultivating, irrigating, harvesting, and producing
4 agricultural or forestry products.

5 (C) Raising, feeding, tending to, or harvesting products from,
6 livestock and any other activity in connection with those
7 activities.

8 (D) Industrial, construction, maintenance, mining, or utility
9 activities or applications, including, but not limited to, material
10 handling equipment.

11 (2) Self-propelled vehicles designed primarily for the
12 transportation of persons or property on a street or highway are
13 specifically excluded from the definition of equipment.

14 (k) “Family member” means a spouse, parent, sibling, child,
15 son-in-law, daughter-in-law, and lineal descendent, including
16 those by adoption.

17 (l) “Good cause” means failure by a dealer to comply with the
18 requirements imposed on the dealer by the dealer contract, if
19 those requirements are not different from those requirements
20 imposed on other similarly situated dealers in this state.

21 (m) “Index” means the United States Department of Labor,
22 Bureau of Labor Statistics purchase price index for construction
23 machinery series identification number pcu333120333120, or
24 any successor index measuring substantially similar information.

25 (n) “Inventory” means equipment, repair parts,
26 data-processing hardware or software, and specialized service or
27 repair parts.

28 (o) “Major shareholder” means a shareholder with 51 percent
29 or greater interest in a dealership.

30 (p) “Manufacturer Created Incentive Program” means a
31 program in which the dealer’s inventory has not been sold but
32 has been used for specialized purposes, including, but not limited
33 to, harvest rental programs, dealer purchase rentals, and
34 short-term rentals. ~~Equipment used for these purposes are~~
35 ~~considered new, minus hours of operation, when sold to the~~
36 ~~consumer.~~ The warranty that is transferred to the consumer upon
37 sale, *which shall be disclosed prior to sale*, is the manufacturer
38 provided base warranty, less hours and time used while in a
39 manufacturer created incentive program.

1 (q) "Net equipment cost" means the price the dealer actually
2 paid to the supplier for equipment, plus (1) freight, at truckload
3 rates in effect as of the effective date of the termination of a
4 dealer contract, if freight was paid by the dealer from the
5 supplier's location to the dealer's location and (2) reimbursement
6 for labor incurred in preparing the equipment for retail sale or
7 rental, which labor will be reimbursed at the dealer's standard
8 labor rate charged by the dealer to its customers for nonwarranty
9 repair work; provided, however, if a supplier has established a
10 reasonable setup time, that labor will be reimbursed at an amount
11 equal to the reasonable setup time in effect as of the date of
12 delivery multiplied by the dealer's standard labor rate.

13 (r) "Person" means an individual, corporation, partnership,
14 limited liability company, trust, or any and all other forms of
15 business entities, including any other entity in which a person has
16 a majority interest or of which a person has control, as well as the
17 individual officers, directors, and other persons in active control
18 of the activities of each entity.

19 (s) "Repair parts" means all parts and products related to the
20 service or repair of equipment, including superseded parts.

21 (t) "Single-line dealer" means a dealer that has (1) purchased
22 construction, industrial, forestry and mining equipment from a
23 single supplier constituting 75 percent of the dealer's new
24 equipment, calculated on the basis of net cost; and (2) a total
25 annual average sales volume in excess of forty million dollars
26 (\$40,000,000) for the three calendar years immediately preceding
27 the applicable determination date; provided, however, the sales
28 threshold shall be increased each year by an amount equal to the
29 current sales threshold multiplied by the percentage increase in
30 the index from January 1 of the immediately preceding year to
31 January 1 of the current year.

32 (u) "Single-line supplier" means the supplier that is selling the
33 single-line dealer construction, industrial, forestry and mining
34 equipment constituting 75 percent of the dealer's new equipment.

35 (v) "Supplier" means any person engaged in the business of
36 manufacturing, assembly or wholesale distribution of equipment
37 or repair parts. "Supplier" also includes any successor in interest
38 to a supplier, including a purchaser of assets or stock, or a
39 surviving corporation resulting from a merger, liquidation, or
40 reorganization of a supplier.

(w) “Terminate” means to terminate, cancel, fail to renew, or materially change the competitive circumstances of a dealer contract.

SEC. 4. Section 22902 of the Business and Professions Code is amended to read:

22902. It shall be a violation of this chapter for a supplier to take any of the following actions:

(a) To coerce or compel any dealer to order or accept delivery of any equipment or parts that the dealer has not voluntarily ordered, except as required by any applicable law or unless the equipment or repair parts are safety features required by the supplier.

(b) To coerce or compel any dealer to enter into any contract, whether written or oral, or amend an existing dealer contract with the supplier, unless the contract or amendment is imposed on all other similarly situated dealers in the state.

(c) To refuse to deliver to any dealer in reasonable quantities and within a reasonable time after receipt of the dealer’s order, equipment covered by the dealer contract specifically advertised or represented by the supplier to be available for immediate delivery or on an agreed-upon delivery date. The failure to deliver the equipment shall not be considered a violation of this act if the failure is due to prudent and reasonable restrictions on extension of credit by the supplier to the dealer, any breach of or default under the contract by the dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or a business decision by the supplier to limit the production volume of the equipment and written notice is provided to the dealer within 30 days of that decision or other cause over which the supplier has no control.

(d) To terminate, cancel, or fail to renew a dealer contract or materially change the competitive circumstances of the dealer contract without good cause.

(e) To require as a condition of renewal or extension of a dealer contract that the dealer complete substantial renovation of the dealer’s place of business or acquire new or additional space to serve as the dealer’s place of business, unless the supplier provides at least one year’s written notice of the condition that states all grounds supporting the condition. The supplier shall provide not less than two years for the dealer to complete the

1 renovation or acquisition after the one year's notice period has
2 expired.

3 (f) To discriminate, directly or indirectly, in prices charged
4 between different dealers with respect to purchases of equipment
5 or repair parts of like grade and quality and identical brand,
6 where the effect of that discrimination may be to substantially
7 lessen competition, tend to create a monopoly in any line of
8 commerce, or injure, destroy, or prevent competition with any
9 dealer who either grants or knowingly receives the benefit of the
10 discrimination. However, different prices may be charged if (1)
11 the differences are due to differences in the cost of manufacture,
12 sale or delivery of the equipment or repair parts, or (2) the
13 supplier can show that its lower price was made in good faith to
14 meet an equally low price of a competitor and the lower price
15 was made available to other dealers, or (3) the differences are
16 related to the volume of equipment purchased by dealers if the
17 supplier offers all other similarly situated dealers the same
18 volume program.

19 (g) To prevent, by contract or otherwise, any dealer from
20 changing its capital structure, ownership, or the means by which
21 the dealership is financed, provided the dealer at all times meets
22 any reasonable capital standards imposed by the supplier or as
23 otherwise agreed to between the dealer and the supplier and
24 imposed on similarly situated dealers, and provided this change
25 by the dealer does not result in a change of the controlling
26 interest in the executive management or board of directors, or
27 any guarantors of the dealership.

28 (h) To prevent, by contract or otherwise, any dealer or any
29 officer, member, partner, or stockholder of any dealer from
30 selling or transferring any part of the interest of any of them to
31 any other party or parties. However, no dealer, officer, partner,
32 member, or stockholder shall have the right to sell, transfer, or
33 assign the dealership or power of management or control of the
34 dealership without the written consent of the supplier.

35 (i) To require a dealer to assent to a release, assignment,
36 novation, waiver, or estoppel that would relieve any person from
37 liability imposed by this section.

38 (j) To require any dealer to purchase goods or services as a
39 condition of the sale by the supplier to the dealer of any
40 equipment, repair parts, or other goods or services; except that

1 nothing in this subdivision shall prohibit a supplier from
2 requiring the dealer to purchase repair parts, special tools, and
3 training reasonably necessary to maintain the safe operation or
4 quality of operation in the field of any equipment offered for sale
5 by the dealer.

6 (k) To coerce any dealer into a refusal to purchase equipment
7 manufactured by another supplier.

8 (l) To penalize any dealer that purchases equipment or repair
9 parts for sale manufactured by another supplier.

10 (m) To discriminate, directly or indirectly, between dealers of
11 the same product line in filling an order placed by a dealer for
12 retail sale or lease of equipment under a dealer contract.

13 *SEC. 5. Section 22902.5 is added to the Business and*
14 *Professions Code, to read:*

15 *22902.5. Nothing in this chapter permits the offering or*
16 *enforcement of a provision in a dealer contract that requires a*
17 *dealer to comply with a minimum price-fixing provision or any*
18 *other provision to limit competition.*

19 ~~SEC. 5.~~

20 *SEC. 6. Section 22903 of the Business and Professions Code*
21 *is amended to read:*

22 22903. (a) This section shall only apply to a dealer contract
23 between a dealer who is not a single-line dealer and a supplier
24 who is not a single-line supplier.

25 (b) Except where there are grounds for termination of a dealer
26 contract pursuant to paragraph (1), (2), (3), (4), (5), (6), (7), or
27 (8) of subdivision (c), a supplier shall give a dealer 180 days
28 written notice of the supplier's intent to terminate a dealer
29 contract. The notice shall include all reasons constituting good
30 cause for the termination and shall provide the dealer with 60
31 days to cure any claimed deficiency. If the deficiency is cured
32 within 60 days *to the satisfaction of the supplier and the supplier*
33 *determines the deficiency was cured in good faith*, the notice of
34 termination shall be void. Except as provided in subdivision (d),
35 a supplier may not terminate a dealer contract based on
36 paragraph (12) of subdivision (c) unless the supplier gives the
37 dealer notice of that action at least ~~two years~~ *one-year* before the
38 effective date of that action. If the dealer achieves the supplier's
39 requirements for reasonable standards or performance objectives
40 before the expiration of the ~~two-year~~ *one year* notice period, the

1 notice shall be void and the dealer contract shall continue in full
2 force and effect.

3 (c) No supplier, directly or through an officer, agent, or
4 employee, may terminate, cancel, fail to renew, or materially
5 change the competitive circumstances of a dealer contract
6 without good cause. In addition to the definition in subdivision
7 ~~(k)~~(l) of Section 22901, good cause exists whenever the dealer
8 has taken any of the following actions:

9 (1) Transferred a controlling ownership interest in the
10 dealership without the consent of the supplier, who shall not
11 withhold consent unreasonably.

12 (2) Made a material misrepresentation or falsification of any
13 record.

14 (3) Filed a voluntary petition in bankruptcy or has had an
15 involuntary petition in bankruptcy filed against the dealer that
16 has not been discharged within 60 days after the filing or is
17 insolvent or in receivership.

18 (4) Pleaded guilty to or has been convicted of a felony
19 involving an act of moral turpitude.

20 (5) Failed to operate in the normal course of business for
21 seven consecutive business days, without the consent of the
22 supplier, or has terminated the business.

23 (6) Relocated or established a new or additional dealer's place
24 of business without the supplier's consent.

25 (7) Materially defaulted under any chattel mortgage or other
26 security agreement between the dealer and the supplier, or there
27 has been a revocation of any guarantee of the dealer's present or
28 future obligations to the supplier. However, good cause does not
29 exist if a person revokes any guarantee in connection with or
30 following the transfer of that person's entire ownership interest in
31 the dealer unless the supplier requires that person to execute a
32 new guarantee of the dealer's present or future obligations in
33 connection with that transfer of ownership interest.

34 (8) Failed to satisfy any payment obligation as it became due
35 and payable to the supplier, failed to promptly account to the
36 supplier for any proceeds from the sale of equipment, or failed to
37 hold those proceeds in trust for the benefit of the supplier.

38 ~~(9) Engaged in conduct that is injurious or detrimental to the~~
39 ~~dealer's customers, the public welfare, or the representation or~~
40 ~~reputation of the supplier's product.~~

1 (9) *Engaged in conduct that is injurious or detrimental to the*
2 *following:*

3 (A) *The dealer's customers. This includes, but is not limited to,*
4 *the following conduct: excessive pricing, misleading advertising,*
5 *failure to provide service and replacement parts, and failure to*
6 *perform warranty obligations.*

7 (B) *The public welfare.*

8 (C) *The representation or reputation of the supplier's product.*

9 (10) *Consistently failed to meet building and housekeeping*
10 *requirements, or failed to provide adequate sales, service, or parts*
11 *personnel commensurate with the dealer contract.*

12 (11) *Consistently failed to comply with the applicable*
13 *licensing laws pertaining to the products and services being*
14 *represented for and on the supplier's behalf.*

15 (12) *Consistently failed to meet and maintain the supplier's*
16 *requirements for reasonable standards and performance*
17 *objectives, if the supplier has given the dealer reasonable*
18 *standards and performance objectives that are based on the*
19 *manufacturer's experience in other comparable market areas.*

20 (d) *Notwithstanding subdivision (c),—a supplier that if the*
21 *sales, service, rental, and repair of a supplier's product*
22 *represents the lesser of 10 percent or three hundred fifty thousand*
23 *dollars (\$350,000) of the dealer's total gross annual revenue that*
24 *includes, but is not limited to, the sales, service, rental, or repair,*
25 *for each dealer location,—may not the supplier may terminate a*
26 *dealer contract based on paragraph (12) of subdivision (c)—unless*
27 *the supplier gives upon providing the dealer with notice of that*
28 *action at least 180 days before the effective date of that action. If*
29 *the dealer achieves the supplier's requirements for reasonable*
30 *standards or performance objectives within 60 days of receipt of*
31 *the—cancellation termination notice, the notice shall be void and*
32 *the dealer contract shall continue in full force and effect.*

33 (e) *Notwithstanding a dealer contract that provides for*
34 *exclusivity during the term of the contract, a supplier may begin*
35 *contract negotiations with a potential replacement dealer 60*
36 *days prior to the expiration of the notice period that has been*
37 *provided pursuant to subdivisions (b) or (d) if the dealer failed to*
38 *achieve the supplier's requirements for reasonable standards or*
39 *performance objectives within 60 days of receipt of the*
40 *termination notice. Nothing in this subdivision shall authorize a*

1 *replacement dealer to conduct operations with a supplier during*
2 *the term of an exclusive contract.*

3 ~~SEC. 6.~~

4 SEC. 7. Section 22903.1 is added to the Business and
5 Professions Code, to read:

6 22903.1. (a) This section shall only apply to a dealer contract
7 between a dealer who is not a single-line dealer and a supplier
8 who is not a single-line supplier.

9 (b) If a supplier has contractual authority to approve or deny a
10 request for a sale or transfer of a dealer's business or an equity
11 ownership interest in the business, the supplier shall approve or
12 deny the request within 60 days after receiving a written request
13 from the dealer. If the supplier has neither approved nor denied
14 the request within the 60-day period, the request shall be deemed
15 approved. The dealer's request shall include reasonable financial
16 information, personal background, character references, and
17 work history information for the acquiring persons. If a supplier
18 denies a request made pursuant to this section, the supplier shall
19 provide the dealer with a written notice of that denial that states
20 the reasons for the denial. A supplier may only deny a request
21 based on the failure of the proposed transferees to meet the
22 reasonable requirements consistently imposed by the supplier in
23 determining approval of transfers or approvals of new dealers.

24 (c) If a dealer dies and the supplier has contractual authority to
25 approve or deny a request for the sale or transfer of the dealer's
26 business or an equity ownership interest in the business, the
27 dealer's estate or other person with authority to transfer the
28 dealer's assets shall have 180 days to submit to the supplier a
29 written request for a sale or transfer of that business or equity
30 ownership interest. If the request is timely submitted, the supplier
31 shall approve or deny that request in accordance with subdivision
32 (b). Notwithstanding any contrary provision of this chapter, any
33 attempt by a supplier to terminate the dealer contract as a result
34 of the death of a dealer shall be delayed until there has been
35 compliance with the terms of this section or the 180-day period
36 has expired, as applicable.

37 (d) Notwithstanding subdivision (c), if a supplier and dealer
38 executed an agreement concerning succession rights prior to the
39 dealer's death, and if the agreement is still in effect, the
40 agreement shall be observed even if it designated someone other

1 than the surviving spouse or heirs of the decedent as the
2 successor.

3 (e) A supplier may withhold consent to a transfer of an interest
4 in a dealership if, with due regard to regional market conditions
5 and distribution economies, the dealer's area of responsibility or
6 trade area does not afford sufficient sales potential to reasonably
7 support a dealer. In any dispute between a supplier and dealer
8 under this subdivision, the supplier shall bear the burden of
9 proving that the dealer's area of responsibility or trade area does
10 not afford sufficient sales potential to reasonably support a
11 dealer.

12 ~~SEC. 7.~~

13 *SEC. 8.* Section 22903.2 is added to the Business and
14 Professions Code, to read:

15 22903.2. (a) This section shall only apply to dealer contracts
16 between a single-line dealer and its single-line supplier.

17 (b) No supplier may terminate a dealer contract without good
18 cause. In addition to the definition in subdivision ~~(k)~~(l) of Section
19 22901, good cause exists whenever any one of the following is
20 applicable:

21 (1) There has been a closeout or sale of 65 percent or more of
22 the dealer's assets related to the equipment business or there has
23 been a commencement of a dissolution or liquidation of the
24 dealer.

25 (2) The dealer has changed its principal place of business or
26 added additional locations without prior approval of the supplier,
27 which shall not be unreasonably withheld.

28 (3) The dealer has materially defaulted under a chattel
29 mortgage or other security agreement between the dealer and the
30 supplier, or there has been a revocation or discontinuance of a
31 guarantee of a present or future obligation of the dealer to the
32 supplier.

33 (4) The dealer has failed to operate in the normal course of
34 business for seven consecutive days, without the consent of the
35 supplier, or has otherwise abandoned the business.

36 (5) The dealer has pleaded guilty to or has been convicted of a
37 felony involving an act of moral turpitude.

38 (6) The dealer has transferred an interest in the dealership, or a
39 person with a substantial interest in the ownership or control of
40 the dealership, including an individual, proprietor, partner or

major shareholder, has withdrawn from the dealership or died, or a substantial reduction has occurred in the interest of a partner or major shareholder in the dealership. However, good cause does not exist if the supplier has consented to an action described in this paragraph.

(c) Except as otherwise provided in this subdivision, a supplier shall provide a dealer with at least 90-days written notice of termination. The notice shall state all reasons constituting good cause for termination and shall state that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is cured within 60 days, the notice shall be void. Notwithstanding the foregoing, if the good cause for termination is due to the dealer's failure to meet or maintain the supplier's requirements for market penetration, a reasonable period of time shall have existed where the supplier has worked with the dealer to gain the desired market share. The notice and right to cure provisions under this subdivision shall not apply if the reason for termination is for any reason set forth in subdivision (b).

(d) If a dealer dies, a supplier shall have 90 days in which to consider and make a determination on a request by a family member to enter into a new dealer contract to operate the dealership. If the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for rejection. This section does not entitle an heir, personal representative, or family member to operate a dealership without specific written consent of the supplier.

(e) Notwithstanding subdivision (d), if a supplier and dealer have previously executed an agreement concerning succession rights prior to the dealer's death, and if that agreement is still in effect, the agreement shall be observed even if it designated someone other than the surviving spouse or heirs of the decedent as the successor.

(f) For purposes of this section, dealer assets shall not include land or buildings.

~~SEC. 8.~~

SEC. 9. Section 22903.3 is added to the Business and Professions Code, to read:

22903.3. (a) If a dealer submits a warranty claim to a supplier while the dealer contract is in effect or within 60 days

1 after the termination of the dealer contract, and if the claim is for
2 work performed before the termination or expiration of the dealer
3 contract, the supplier shall approve or reject that warranty claim
4 by written notice to the dealer within 45 days after the supplier's
5 receipt of the warranty claim. If the supplier approves the
6 warranty claim, the supplier shall pay the dealer or credit the
7 dealer's account the entire amount owed with respect to the claim
8 within 30 days of approval. If the supplier rejects the warranty
9 claim, the supplier shall give the dealer written or electronic
10 notice of the grounds for rejection. These reasons must be
11 consistent with the supplier's reason for rejecting the warranty
12 claims of other dealers, both in terms and manner of
13 enforcement. If the supplier does not provide the dealer with
14 grounds for rejection, the claim shall be deemed to be approved.

15 (b) Any claim that is not approved by the supplier based upon
16 the dealer's failure to properly follow the procedural or technical
17 requirements for submission of the warranty claim may be
18 resubmitted in proper form by the dealer within 30 days of
19 receipt of the supplier's rejection notification.

20 (c) Warranty work performed by the dealer shall be
21 compensated in accordance with the reasonable and customary
22 amount of time required to complete the work, expressed in
23 hours and fractions multiplied by the dealer's established
24 customer hourly retail labor rate, which shall have previously
25 been made known to the supplier. Parts used in warranty repair
26 work shall be reimbursed at the current net parts cost plus 15
27 percent and the cost of freight. For purposes of this subdivision,
28 "established customer hourly retail labor rate" means the lowest
29 posted customer in-shop retail labor rate for the six months
30 preceding the claim.

31 (d) For the purpose of this act, any repair work or installation
32 of replacement parts with respect to the dealer's equipment in
33 inventory or equipment of the dealer's customers at the request
34 of the supplier, including work performed pursuant to a product
35 improvement program, shall be deemed to create a warranty
36 claim for which the dealer shall be paid pursuant to this section.

37 (e) A supplier may audit warranty claims submitted by its
38 dealers for a period of up to one year. If the audit reveals an
39 amount was misrepresented by the supplier, the supplier may
40 charge its dealers the amount shown by the audit to be

misrepresented. If a warranty claim is misrepresented, then subsequent warranty claims submitted within the two-year period ending with the date of the audit may be audited. However, a supplier shall not audit a warranty claim more than once.

(f) The requirements of subdivisions (a), (b), and (c) apply to all warranty claims submitted by a dealer to a supplier where the dealer has complied with the supplier's reasonable written policies and procedures for warranty reimbursement. A supplier's warranty reimbursement policies and procedures shall be deemed unreasonable to the extent they conflict with any of the provisions of this section.

(g) A dealer may choose to accept alternate reimbursement terms and conditions instead of the requirements of subdivisions (a), (b), and (c) if there is a written dealer contract between the supplier and the dealer that requires the supplier to compensate the dealer for warranty labor costs either as: (1) a discount in the pricing of the equipment to the dealer; or (2) a lump-sum payment to the dealer that is made to the dealer within 90 days of the sale of the supplier's new equipment. If the requirements of this subdivision are met and alternate terms and conditions are in place, subdivisions (a), (b), and (c) do not apply and the alternate terms and conditions are enforceable. Nothing contained in this subdivision shall be deemed to affect the supplier's obligation to reimburse the dealer for parts in accordance with subdivision (c).

(h) If a supplier fails or refuses to pay for warranty work covered under this section within 30 days of the supplier's approval of the dealer's claim, the supplier shall be liable for 110 percent of the total claim, plus interest at the statutory rate from the payment due date until the date of payment, and actual costs for any court or arbitration proceeding, including costs for attorney's fees and arbitrators.

~~SEC. 9.~~

SEC. 10. Section 22904 of the Business and Professions Code is amended to read:

22904. Every supplier shall provide to its dealers, on an annual basis, an opportunity to return a portion of their surplus parts inventory for credit. The surplus procedure shall be administered as follows:

(a) The supplier may notify its dealers of a time period, of at least 90 days' duration, during which time dealers may submit

1 their surplus parts list and return their surplus parts to the
2 supplier. A supplier may choose to designate a different period of
3 time for each dealer to return surplus parts.

4 (b) If a supplier has not notified a dealer of a specific time
5 period for returning surplus parts within the preceding 12
6 months, then it shall authorize and allow the dealer's surplus
7 parts return request within 60 days after receipt of that request
8 from the dealer.

9 (c) Pursuant to the provisions of this section, a supplier shall
10 allow surplus parts return authority on a dollar value of parts
11 equal to 10 percent of the total dollar value of parts purchased by
12 the dealer from the supplier during the 12-month period
13 immediately preceding the notification to the dealer by the
14 supplier of the surplus parts return program, or the month the
15 dealer's return request is made, whichever is applicable.

16 (d) Returned parts shall be in new and unused condition and
17 shall have been purchased by the dealer from the supplier to
18 whom they are returned. Obsolete and superseded parts may be
19 returned if listed in the supplier's current returnable parts list or if
20 those parts have not been the subject of a supplier's return
21 program at the date of the notification to the dealer by the
22 supplier of the surplus parts return program, or the date of the
23 dealer's parts return request, whichever is applicable.

24 (e) The minimum lawful credit to be allowed for returned parts
25 shall be 95 percent of the current net parts cost, as listed in the
26 supplier's current returnable parts list at the date of the
27 notification to the dealer by the supplier of the surplus parts
28 return program, or the date of the dealer's parts return request,
29 whichever is applicable.

30 ~~(f) The supplier shall credit the dealer's account within 30~~
31 ~~days after the supplier's receipt of the dealer's returned parts.~~

32 ~~(g)~~

33 (f) The annual parts return provided for in this section may be
34 waived by a dealer.

35 ~~(h) If a supplier fails or refuses to pay for returned parts~~

36 (g) *If an outstanding balance is owed to the supplier, the*
37 *supplier may credit the dealer's account within 30 days after the*
38 *supplier's receipt of the dealer's returned parts. If no balance*
39 *exists, the supplier shall pay the dealer within 30 days after the*
40 *supplier's receipt of the dealer's returned parts. If a supplier*

refuses to credit the dealer's account or pay the dealer for returned parts covered by this section within 30 days of the supplier's receipt of returned parts, the supplier shall be liable for 110 percent of the total current net parts cost, plus interest at the statutory rate from the payment due date until the date of payment, and actual costs for any court or arbitration proceeding, including costs for attorney's fees and arbitrators.

~~SEC. 10.~~

SEC. 11. Section 22905 of the Business and Professions Code is amended to read:

22905. Whenever a dealer contract is terminated by cancellation or nonrenewal, the supplier shall repurchase the inventory as provided in this section.

(a) The supplier shall repurchase at its fair market value or assume the lease responsibilities of any specific data-processing hardware that the supplier required the dealer to purchase to satisfy the minimum requirements of the dealer contract, including computer systems equipment required and approved by the supplier to communicate with the supplier. The fair market value of property subject to repurchase shall be deemed to be equal to the acquisition cost, including any shipping, handling and set-up fees, less straight line depreciation of that acquisition cost over three years. If the dealer purchased data-processing hardware or software that exceeded the supplier's minimum requirements, the acquisition cost of that data-processing hardware or software shall be deemed to be the acquisition cost of hardware or software of similar quality that did not exceed the minimum requirements of the supplier.

(b) The supplier shall pay a sum equal to 100 percent of the net equipment cost of all new, unsold, undamaged, and complete equipment.

(c) The supplier shall pay a sum equal to 100 percent of the net equipment cost of all unsold, undamaged demonstrators, less depreciation due to usage of those demonstrators. The depreciation adjustment shall be based on published industry rental rates to the extent those rates are available. ~~Notwithstanding other provisions of law~~ For purposes of this subdivision, demonstrators, with hour meters that have less than 50 hours of use shall be considered new, unsold equipment subject to repurchase under this section.

(d) The supplier shall pay a sum equal to 100 percent of the net equipment cost of all unsold and undamaged equipment used in a manufacturer created incentive program, as defined in subdivision ~~(o)~~ (p) of Section 22901, less depreciation due to usage and bonus or volume incentive received by the dealer for the equipment. The depreciation adjustment shall be based on published industry rental rates to the extent these rates are available. ~~Notwithstanding any other provision of law, machines~~ *For purposes of this subdivision, equipment with hour meters used in a manufacturer created incentive program with less than 50 hours of use will be considered new, unsold equipment subject to repurchase under this section.*

(e) The supplier shall pay a sum equal to 95 percent of the current net parts costs on new, unsold, undamaged repair parts that had previously been purchased from the supplier and held by the dealer on the date that the dealer contract terminates or expires.

(f) The supplier shall also pay the dealer 5 percent of the current net parts cost on all new, unused, and undamaged repair parts returned, to cover the cost of handling, packing, and loading of those parts for return to the supplier. The dealer may allow the supplier to perform the handling, packing, and loading of parts instead of receiving the 5 percent payment for these services. When the supplier is chosen to perform these services, the dealer shall make available to the supplier, at the dealer's address or at the places at which it is located, all equipment previously purchased by the dealer.

(g) The supplier shall pay a sum equal to 75 percent of the net equipment cost, including shipping, handling and set-up fees, of all specialized equipment or repair tools previously purchased pursuant to requirements of the supplier prior to the date of the applicable notification of termination or nonrenewal of the dealer contract. The specialized equipment or repair tools must be unique to the supplier's product line and must be complete and in operating condition.

(h) Upon the payment or allowance of credit to the dealer's account of the sums required by this section, the title to all inventory purchased shall pass to the supplier making payment, and the supplier shall be entitled to the possession of the inventory. All payments or allowances of credit due to dealers

shall be paid or credited within 90 days after receipt by the supplier of property required to be repurchased. Any payments or allowances of credit due to dealers that are not paid within the 90-day period will accrue interest at the statutory rate. The supplier may withhold payments due under this section during the period of time in which the dealer fails to comply with its contractual obligations to remove any signage indicating that the dealer is an authorized dealer of the supplier.

(i) The supplier and dealer shall each pay 50 percent of the costs of freight to ship equipment to the nearest retail outlet or to ship repair parts to the nearest supplier distribution center.

(j) The provisions of this section shall not require the repurchase from the dealer of any of the following:

(1) Any repair part that is in a broken or damaged package. However, the supplier shall be required to repurchase a repair part in a broken or damaged package, for a repurchase price that is equal to 85 percent of the current net parts cost for the repair part, if the aggregate current price for the entire package of repair parts is seventy-five dollars (\$75) or higher.

(2) Any repair part that, because of its condition, is not resalable as a new part without reconditioning.

(3) Any inventory for which the dealer is unable to furnish evidence, satisfactory to the supplier, of clear title, free and clear of all claims, liens and encumbrances.

(4) Any inventory that the dealer desires to keep if the dealer has a contractual right to do so.

(5) Any equipment or repair parts that are not in new, unsold, undamaged, complete condition; subject to the provisions of this act relating to demonstrators.

(6) Any equipment or repair parts acquired by the dealer from any source other than the supplier unless that equipment or those repair parts were ordered from, or invoiced to, the dealer by the supplier.

(7) Any equipment or repair parts that are not returned to the supplier within 90 days after the latter of (A) the effective date of termination of a dealer contract or (B) the date the dealer receives from the supplier all information, documents or supporting materials required by the supplier to comply with the supplier's return policy. However, this paragraph shall not be applicable to a dealer if the supplier did not give the dealer notice of the

1 90-day deadline at the time the applicable notice of termination
2 was sent to the dealer.

3 (k) If any supplier fails or refuses to repurchase any inventory
4 covered under this section within 90 days after termination of a
5 dealer contract, the supplier shall be liable for the total amount of
6 110 percent of the current net equipment cost of the inventory,
7 plus any freight charges paid by the dealer, interest accrued at the
8 statutory rate from the date of shipment to the supplier until the
9 date of payment, 5 percent for handling, packing, and loading,
10 and actual costs for any court or arbitration proceedings,
11 including costs for attorney's fees and arbitrators.

12 (l) Notwithstanding any provision to the contrary in the
13 Commercial Code, the dealer shall retain a first and prior lien
14 against all inventory returned by the dealer to the supplier under
15 this act until the dealer has paid all amounts owed by the supplier
16 for the repurchase of inventory required under this act.

17 (m) This section shall not be construed to affect any security
18 interest that the supplier may have in the inventory of the dealer,
19 and any repurchase shall not be subject to the provisions of the
20 bulk sales law or to the claims of any secured or unsecured
21 creditors of the supplier or any assignee of the supplier until such
22 time as the dealer has received full payment or credit.

23 (n) The dealer may not cancel a dealer contract to avoid a
24 payment obligation to the supplier for equipment or parts.

25 (o) *If a dealer has more than one business location covered by*
26 *the same dealer contract, the repurchase requirements of this*
27 *section shall apply only to the repurchase of a dealer's inventory*
28 *obtained from the supplier or the supplier's distributor by the*
29 *particular business location or locations involved in the dealer*
30 *contract termination and shall not apply to any other business*
31 *locations covered by the same contract.*

32 ~~SEC. 11.~~

33 *SEC. 12.* Section 22906 of the Business and Professions Code
34 is amended to read:

35 22906. (a) A dealer, as defined in subdivision (e) of Section
36 22901, is not entitled to establish a lien pursuant to this act,
37 unless that person has first sent to the lien debtor a written notice,
38 by certified mail, which states all of the following:

39 (1) The payment of the reasonable or agreed charges is more
40 than 90 days overdue. This requirement does not apply to

1 equipment subject to repurchase that was returned to the supplier
2 subsequent to return of other equipment also subject to
3 repurchase for which payment is overdue.

4 (2) The amount of reasonable or agreed charges that are
5 overdue.

6 (3) The lien debtor has the following three alternatives:

7 (A) Allow the lien to be filed.

8 (B) Enter into a consensual security interest in the proceeds,
9 pursuant to the Commercial Code.

10 (C) Pay the reasonable or agreed charges that are overdue.

11 (4) The lien debtor has 10 days from receipt of the notice to
12 select an alternative, notify the lien claimant of the alternative
13 selected, and satisfy all of the requirements of the selected
14 alternative. This part of the notice to the lien debtor shall be in
15 10-point type or bolder.

16 (5) The lien claimant may file the notice of claim of lien
17 pursuant to this chapter at any time thereafter if the lien debtor
18 does not comply with the requirements of this section.

19 (b) A dealer who has complied with subdivision (a), has a lien
20 for payment of the repurchase amount payable pursuant to
21 subdivisions (b), (c), (d), (e), and (f) of Section 22905 and for the
22 costs of enforcing the lien.

23 (c) The lien established pursuant to this chapter attaches to the
24 proceeds of any sale of the equipment returned for repurchase.

25 (d) The amount of charges secured by the lien shall not exceed
26 an amount equal to the reasonable or agreed charges for the
27 equipment specified in Section 22905.

28 ~~SEC. 12.~~

29 *SEC. 13.* Section 22907 of the Business and Professions Code
30 is amended to read:

31 22907. Except as otherwise provided in this act, the notice of
32 lien shall remain in effect, and no new notice of claim of lien
33 shall be required in order to maintain the lien, as long as the
34 dealer remains unpaid for the amounts secured by the lien.

35 ~~SEC. 13.~~

36 *SEC. 14.* Section 22908 of the Business and Professions Code
37 is amended to read:

38 22908. The lien created by this act shall be perfected and
39 shall be effective upon the filing of a notice claim of lien with the
40 Secretary of State.

1 ~~SEC. 14.~~

2 *SEC. 15.* Section 22909 of the Business and Professions Code
3 is amended to read:

4 22909. The notice of claim of lien shall contain all of the
5 following information:

6 (a) The name and address of the lien claimant.

7 (b) The name and address of the lien debtor.

8 (c) The location of the property to which the equipment was
9 returned.

10 (d) A statement that the payment of reasonable or agreed
11 charges is more than 90 days overdue.

12 (e) The amount of the reasonable or agreed charges that are
13 overdue.

14 (f) A statement, signed under penalty of perjury, that includes
15 all of the following:

16 (1) That the lien claimant sent to the lien debtor the notice
17 required pursuant to subdivision (a) of Section 22906.

18 (2) That more than 10 days have elapsed since the notice was
19 received by the lien debtor.

20 (3) That the lien debtor has not complied with the
21 requirements of subdivision (a) of Section 22906.

22 (g) A statement that the lien claimant has an equipment
23 repurchase lien pursuant to Section 22906.

24 ~~SEC. 15.~~

25 *SEC. 16.* Section 22910 of the Business and Professions Code
26 is amended to read:

27 22910. The notice of claim of lien shall be signed by the lien
28 claimant or by a person authorized by the claimant.

29 ~~SEC. 16.~~

30 *SEC. 17.* Section 22911 of the Business and Professions Code
31 is amended to read:

32 22911. The notice of a claim of lien shall be filed on a form
33 prescribed by the Secretary of State pursuant to Section 9502 of
34 the Commercial Code. The standard form shall be completed in
35 its entirety except as follows:

36 (a) The lien claimant may be identified either as a lien
37 claimant or as a secured party.

38 (b) The form shall be signed by the lien claimant and need not
39 be signed by the lien debtor.

1 (c) The description of the collateral shall be the information
2 specified in subdivisions (c), (d), (e), and (g) of Section 22909.

3 (d) Attached to the form shall be a separately signed statement
4 containing the information specified in subdivision (f) of Section
5 22909.

6 ~~SEC. 17.~~

7 *SEC. 18.* Section 22913 of the Business and Professions Code
8 is amended to read:

9 22913. The lien claimant shall provide written notice of the
10 claim of lien to the lien debtor within 10 days of the date of filing
11 the lien with the Secretary of State.

12 ~~SEC. 18.~~

13 *SEC. 19.* Section 22915 of the Business and Professions Code
14 is amended to read:

15 22915. (a) The lien created pursuant to this act shall be
16 treated according to the following:

17 (1) Have priority in accordance with the time the notice of
18 claim of lien is filed with the Secretary of State.

19 (2) Have the same priority as a security interest perfected by
20 the filing of a financing statement as of the date of notice of
21 claim of lien was filed with the Secretary of State.

22 (3) Not have priority over labor claims for wages and salaries
23 for personal services which are provided by any employee to any
24 lien debtor in connection with the equipment supplied, the
25 proceeds of which are subject to the lien.

26 ~~SEC. 19.~~

27 *SEC. 20.* Section 22920 of the Business and Professions Code
28 is amended to read:

29 22920. (a) When a lien claimant receives payment for the
30 total amounts secured by the lien, the lien claimant shall send the
31 lien debtor a statement relinquishing the security interest under
32 the notice of claim of lien, which shall be identified by the date,
33 names of parties thereto, and file number. If the affected
34 lienholder of record fails to send the termination statement within
35 10 days, he or she is liable to the debtor for all actual damages
36 suffered by the debtor by reason of this failure, and if that failure
37 is in bad faith, for a penalty of one hundred dollars (\$100).

38 (b) The filing officer shall mark each termination statement
39 with the date and time of the filing and shall index the statement
40 under the name of the lien debtor and under the file number of

1 the original lien. If the filing officer has an electronic microfilm
2 or other photographic record of the lien and related filings, he or
3 she may remove and destroy the originals from the files after
4 receipt of the termination statement. If the filing officer does not
5 have the record, he or she may remove and destroy the originals
6 from the files after one year from the receipt of the termination
7 statement.

8 ~~SEC. 20.~~

9 *SEC. 21.* Section 22922 of the Business and Professions Code
10 is amended to read:

11 22922. (a) Except to the extent specifically set forth in this
12 act, the lien created by this act is subject to Division 9
13 (commencing with Section 9101) of the Commercial Code.

14 (b) For the purposes of this act, the following terms have the
15 following meanings:

16 (1) "Secured party" refers to the dealer, lien creditor, lien
17 claimant, or assignee thereof.

18 (2) "Debtor" refers to the supplier, lien debtor, or debtor.

19 (3) "Collateral" refers to the equipment subject to the lien
20 created under this chapter.

21 (c) A security agreement is not necessary to make an
22 equipment repurchase lien created under this chapter enforceable.

23 (d) An equipment repurchase lien created under this chapter
24 shall not continue in the repurchased equipment following the
25 disposition thereof.

26 (e) The right of a dealer to enforce the lien created under this
27 act shall be governed by this act and shall not be governed by
28 Chapter 6 (commencing with Section 9601) of Division 9 of the
29 Commercial Code.

30 ~~SEC. 21.~~

31 *SEC. 22.* Section 22924 of the Business and Professions Code
32 is amended to read:

33 22924. (a) In the event of the death or incapacity of the
34 dealer, which in this context shall mean an owner, equal or
35 majority partner, or the majority stockholder of a corporation,
36 operating as a dealer, the supplier shall, at the option of the heirs
37 at law, if the dealer died intestate, or the executor under the terms
38 of the deceased dealer's last will and testament, if the dealer died
39 testate, repurchase the inventory from the estate as if the supplier
40 had terminated the dealer contract and the inventory repurchase

1 provisions of Section 22905 are applicable. The heirs or executor
2 shall have 180 days from the date of the death of the dealer or
3 majority stockholder to exercise the option under this section.
4 However, nothing in this section shall require the repurchase of
5 inventory, if the heirs or executor and the supplier enter into a
6 new dealer agreement, or if a successor to the dealer is
7 established pursuant to subdivision (b) of Section 22903.1. This
8 section shall be subject to that portion of the dealer contract
9 pertaining to death of the dealer or succession, to the extent the
10 contract is not inconsistent. Nothing in this section shall entitle
11 an heir or personal representative of a deceased dealer or
12 majority stockholder to operate the dealership beyond the 180
13 days provided for in this subdivision without the consent of the
14 supplier.

15 (b) The provisions of this section shall be supplemental to any
16 agreement between the dealer and the supplier covering the
17 return of equipment, attachments, and repair parts.
18 Notwithstanding anything contained in this section, the rights of
19 a supplier to charge back to the dealer's account amounts
20 previously paid or credited as a discount incident to the dealer's
21 purchase of inventory shall not be affected. Further, any
22 repurchase shall not be subject to the provisions of the bulk sales
23 law.

24 ~~SEC. 22.~~

25 *SEC. 23.* Section 22925 of the Business and Professions Code
26 is amended to read:

27 22925. Any dealer may bring an action against a supplier in
28 any court of competent jurisdiction for damages sustained by the
29 dealer as a consequence of the supplier's violation of any
30 provisions of this chapter, together with costs and reasonable
31 attorney's fees. The dealer may also be granted injunctive relief
32 against unlawful termination, cancellation, nonrenewal, and
33 change in competitive circumstances. The remedies set forth in
34 this action shall not be deemed exclusive and shall be in addition
35 to any other remedies permitted by law. This section is not
36 intended to affect current law pertaining to product liability
37 actions.

38 ~~SEC. 23.~~

39 *SEC. 24.* Section 22926 of the Business and Professions Code
40 is amended to read:

1 22926. If any provision of this act or the application thereof
2 to any person or circumstances is held invalid, that invalidity
3 shall not affect other provisions or applications of this act which
4 can be given effect without the invalid provision or application,
5 and to this end the provisions of this act are severable.

6 ~~SEC. 24.~~

7 *SEC. 25.* Section 22927 of the Business and Professions Code
8 is amended to read:

9 22927. This act shall apply to dealer contracts in effect on the
10 effective date of this act that have no expiration date and that are
11 continuing contracts, and all other dealer contracts entered into or
12 renewed on or after the effective date of this act.

13 A provision in any contract or agreement with respect to a
14 supplier that requires jurisdiction or venue or forum outside of
15 this state or requires the application of the laws of another state is
16 void with respect to a claim otherwise enforceable under this act.

17 ~~SEC. 25.~~

18 *SEC. 26.* This act is an urgency statute necessary for the
19 immediate preservation of the public peace, health, or safety
20 within the meaning of Article IV of the Constitution and shall go
21 into immediate effect. The facts constituting the necessity are:

22 In order to make needed changes to regulatory provisions
23 relating to equipment dealers as soon as possible, it is necessary
24 that this act take effect immediately.